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Bill C-21: Yellow Flag Laws To Temporarily (Or Indefinitely) Suspend A Gun License

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Mandatory prohibition order
109 (1) Where a person is convicted, or discharged under section 730, of
(a) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

Red Flag Laws were covered previously. Bill C-21, would also allow for a Chief Firearms Officer to suspend or revoke the license of a person based on “reasonable grounds”. However, the wording is vague, and a reasonable interpretation is that a suspension could be renewed indefinitely. It also calls into question the due process options the person would have.

1. Gun Rights Are Essential, Need Protecting

The freedoms of a society can be gauged by the laws and attitudes they have towards firearms. Governments, and other groups can push around an unarmed population much easier than those who can defend themselves. It's not conspiratorial to wonder about those pushing for gun control. In fact, healthy skepticism is needed for a society to function.

2. What The Firearms Act Currently Says On This

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Firearms Act
S.C. 1995, c. 39
Assented to 1995-12-05
An Act respecting firearms and other weapons
Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

> Refusal to Issue and Revocation
> Marginal note: Licences and authorizations
> .
> 68 A ***chief firearms officer shall refuse to issue a licence*** if the applicant is not eligible to hold one and may ***refuse to issue an authorization to carry or authorization to transport for any good and sufficient reason***.

> Marginal note: Registration certificates
> .
> 69 The Registrar may ***refuse to issue a registration certificate, authorization to export***

or authorization to import for ***any good and sufficient reason*** including, in the case of an application for a registration certificate, where the applicant is not eligible to hold a registration certificate.

Marginal note: Revocation of licence or authorization

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70 (1) A chief firearms officer may ***revoke a licence, an authorization to carry or an authorization*** to transport for ***any good and sufficient reason including***, without limiting the generality of the foregoing,

(a) where the holder of the licence or authorization

(i) is no longer or never was eligible to hold the licence or authorization,

(ii) contravenes any condition attached to the licence or authorization, or

(iii) has been convicted or discharged under section 730 of the Criminal Code of an offence referred to in paragraph 5(2)(a); or

(b) where, in the case of a business, a person who stands in a prescribed relationship to the business has been convicted or discharged under section 730 of the Criminal Code of any such offence.

Marginal note: Registrar

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(2) The Registrar may revoke an authorization to export or authorization to import ***for any good and sufficient reason***.

Previous Version

Marginal note: Revocation of registration certificate

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71 (1) The Registrar

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(a) may revoke a registration certificate for a prohibited firearm or a restricted firearm ***for any good and sufficient reason***; and

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(b) shall revoke a registration certificate for a firearm held by an individual where the Registrar is informed by a chief firearms officer under section 67 that the firearm is not being used for a purpose described in section 28.

Marginal note: Automatic revocation of registration certificate

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(2) A registration certificate for a prohibited firearm referred to in subsection 12(3) (pre-August 1, 1992 converted automatic firearms) is automatically revoked on the change of any alteration in the prohibited firearm that was described in the application for the registration certificate.

Marginal note:Notice of refusal to issue or revocation

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72 (1) Subject to subsection (1.1), if a chief firearms officer decides to refuse to issue or to revoke a licence or authorization to transport or the Registrar decides to refuse to issue or to revoke a registration certificate, authorization to export or authorization to import, the chief firearms officer or Registrar shall give notice of the decision in the prescribed form to the applicant for or holder of the licence, registration certificate or authorization.

Marginal note: When notice not required

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(1.1) Notice under subsection (1) need not be given in any of the following circumstances:

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(a) if the holder has requested that the licence, registration certificate or authorization be revoked; or

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(b) if the revocation is incidental to the issuance of a new licence, registration certificate or authorization.

Marginal note: Material to accompany notice

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(2) A notice given under subsection (1) must include reasons for the decision disclosing the nature of the information relied on for the decision and must be accompanied by a copy of sections 74 to 81.

Marginal note: Non-disclosure of information

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(3) ***A chief firearms officer or the Registrar need not disclose any information the***

disclosure of which could, in the opinion of the chief firearms officer or the Registrar, endanger the safety of any person.

Marginal note: Disposal of firearms

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(4) A notice given under subsection (1) in respect of a licence must specify a reasonable period during which the applicant for or holder of the licence may deliver to a peace officer or a firearms officer or a chief firearms officer or otherwise lawfully dispose of any firearm, prohibited weapon, restricted weapon, prohibited device or prohibited ammunition that the applicant for or holder of the licence possesses and during which sections 91, 92 and 94 of the Criminal Code do not apply to the applicant or holder.

Marginal note: Disposal of firearms — registration certificate

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(5) A notice given under subsection (1) in respect of a registration certificate for a prohibited firearm or a restricted firearm must specify a reasonable period during which the applicant for or holder of the registration certificate may deliver to a peace officer or a firearms officer or a chief firearms officer or otherwise lawfully dispose of the firearm to which the registration certificate relates and during which sections 91, 92 and 94 of the Criminal Code do not apply to the applicant or holder.

Marginal note: Reference

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(6) If the applicant for or holder of the licence or registration certificate refers the refusal to issue it or revocation of it to a provincial court judge under section 74, the reasonable period of time does not begin until after the reference is finally disposed of.

The Chief Firearms Officer or the Registrar already have significant powers in the Firearms Act to suspend or revoke licenses and authorizations for “any good and sufficient” reason”. Of course, this is very vague, and open to interpretation.

There is also the option to refuse to disclose information that could “endanger a person”. In practice, this can mean the person who made such a complaint to get the gun seizure would not have to be confronted by the person they accuse.

This Bill will go even further, and allow for 30 day suspensions of licences. Of course, nothing says that a suspension can't be renewed — or another one handed out — 30 days later.

3. What Bill C-21 Would Change To Firearms Act

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BILL C-21
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(First Reading
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Second Session, Forty-third Parliament,
69-70 Elizabeth II, 2020-2021
HOUSE OF COMMONS OF CANADA
BILL C-21
An Act to amend certain Acts and to make certain consequential amendments (firearms)
1 Criminal Code
15 Firearms Act
15 Amendments to the Act
40 Transitional Provision

28 The heading before section 68 of the Act is replaced by the following:

> Refusal to Issue, Suspension and Revocation

29 Section 68 of the Act is replaced by the following:

> Refusal to issue — chief firearms officer
> 68 (1) A chief firearms officer shall refuse to issue a licence if the applicant is not eligible to hold one and ***may refuse to issue an authorization*** to carry referred to in paragraph 20(b) or an ***authorization to transport for any good and sufficient reason***.

> Refusal to issue — Commissioner
> (2) The Commissioner may refuse to issue an authorization to carry referred to in paragraph 20(a) for ***any good and sufficient reason.***

30 The Act is amended by adding the following after section 69:

Suspension

69.1 (1) If a ***chief firearms officer has reasonable grounds to suspect***, on the basis of information that they have collected or received from any person, that the holder of a licence is no longer eligible to hold the licence, ***they may suspend, in respect of a licence, the holder's authorization to use, acquire and import firearms for a period of up to 30 days***.

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Notice

(2) A chief firearms officer shall give notice in writing of the suspension to the holder of the licence. The notice shall include reasons for the decision, the nature of the information relied on for the decision, the period of the suspension and a copy of this section and sections 69.2 and 70.

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Non-disclosure of information

(3) A ***chief firearms officer need not disclose any information the disclosure of which could, in their opinion, endanger the safety of any person***.

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Termination of suspension

(4) A chief firearms officer shall terminate the suspension at the expiry of the period referred to in subsection (2) or, if they are satisfied that the grounds for the suspension no longer exist, at any time before the expiry of that period. The chief firearms officer shall give notice in writing of the termination of the suspension to the holder of the licence.

Prohibition on use, acquisition and importation

69.2 The ***holder of a licence shall not use, acquire or import firearms while their authorizations to do so are suspended under subsection 69.1(1)***.

31 (1) The portion of subsection 70(1) of the Act before paragraph (a) is replaced by the following:

Revocation of licence or authorization

70 (1) A ***chief firearms officer may revoke*** a licence, an authorization to carry referred to in paragraph 20(b) or an authorization to transport — and the ***Commissioner may revoke an authorization to carry*** referred to in paragraph 20(a) — for ***any good and sufficient***

reason including, without limiting the generality of the foregoing,

(2) Subsection 70(1) of the Act is amended by striking out “or” at the end of paragraph (a) and by adding the following after paragraph (a):

(a.1) where the holder of the licence uses, acquires or imports a firearm while their authorizations to do so are suspended under subsection 69.1(1); or

32 Section 71 of the Act is amended by adding the following after subsection (2):

Automatic revocation of registration certificate

(3) A ***registration certificate for a handgun is automatically*** revoked on the failure of the holder to ***provide to a chief firearms officer, during the 180 day period referred to in subsection 58.01(2), the information required to update the registration certificate for that handgun***.

33 Subsection 72(6) of the Act is replaced by the following:

Reference

(6) If the applicant for or holder of a licence or registration certificate ***refers the refusal to issue it or revocation of it to a provincial court judge under section 74 they shall, within 30 days after referring the matter, deliver to a peace officer or otherwise lawfully dispose of any firearm that they possess***. Sections 91, 92 and 94 of the Criminal Code do not apply to the applicant or holder during that time.

Order — return of firearm

(7) ***If the decision of the chief firearms officer or the Registrar is confirmed***, the judge shall, if a firearm was delivered to a peace officer under subsection (6), order the return of the firearm to the applicant for or holder of the licence or registration certificate, in order for the applicant or holder to lawfully dispose of it.

A Chief Firearms Officer can revoke a license for any “good and sufficient” reason. The information can come from anyone, and there is no requirement that the person be named, if done for safety reasons. In short, there is no real right to confront the accuser.

A license can be suspended for 30 days. However, it doesn’t look like there is anything that would prevent necessarily the suspension from being renewed.

While this portion of Bill C-21 is pretty bad, a lot of these rules were already on the books. This just seems to make it easier to issue a 30 day suspension without a real investigation.

4. Challenging Case In Provincial Court

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S.C. 1995, c. 39
Assented to 1995-12-05
An Act respecting firearms and other weapons
Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

74(2) ***Limitation period***

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(2) An applicant or holder may only refer a matter to a provincial court judge under subsection (1) within thirty days after receiving notice of the decision of the chief firearms officer, Registrar or provincial minister under section 29, 67 or 72 ***or within such further time as is allowed by a provincial court judge, whether before or after the expiration of those thirty days***.

75(3) Burden of proof

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(3) At the hearing of the reference, the ***burden of proof is on the applicant or holder to satisfy the provincial court judge*** that the refusal to issue or revocation of the licence, registration certificate or authorization, the decision or the refusal to approve or revocation of the approval was not justified.

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Marginal note: Where hearing may proceed ex parte

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(4) A ***provincial court judge may proceed ex parte to hear and determine a reference***

> ***in the absence of the applicant or holder*** in the same circumstances as those in which a summary conviction court may, under Part XXVII of the Criminal Code, proceed with a trial in the absence of the defendant.

A few things to point out when challenging this is court:

First, there is a 30 day time limit to initiate the proceedings. While the Court "may" allow an extension for applications filed after that, they don't have to, and there is no guarantee they will. So, be aware of this.

Second, the burden is on the Applicant to prove that the revocation or refusal to issue is unjust. The Firearms Officer doesn't have to prove anything.

Third, in limited cases, the Judge can proceed ex-parte, which means "without the Parties". In practice, this will mean the person who applied may not be able to attend.

An overall impression: while this 30 day suspension is certainly bad news, the Firearms Act was already pretty stacked against the rights of gun owners. This certainly doesn't help.

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